



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-120282-10]

RIN 1545-BJ56

Dividend Equivalents From Sources Within the United States; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing (REG-120282-10) that was published in the **Federal Register** on Thursday, December 5, 2013 (78 FR 73128). The proposed rules provide guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments and to withholding agents.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 78 FR 73129, December 5, 2013 are still being accepted and must be received by March 5, 2014.

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel at (202) 317-6938 (not a toll free number).

SUPPLEMENTARY INFORMATION:

**Background**

The withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing (REG-120282-10) that is the subject of these corrections is under section 871 of the Internal Revenue Code.

### **Need for Correction**

As published, withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing (REG-120282-10) contains errors that may prove to be misleading and are in need of clarification.

### **Correction of Publication**

Accordingly, withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing (REG-120282-10), that was the subject of FR Doc. 2013-28932, is corrected as follows:

1. On page 73131, in the preamble, first column, under paragraph heading “B. Definition of ELI”, second line, the language “specified ELI in the 2012 proposed” is corrected to read “a specified ELI in the 2012 proposed”
2. On page 73134, in the preamble, second column, twelfth line from the bottom of the page, the language “security referenced in the contract” is corrected to read “security referenced in the transaction”.
3. On page 73135, in the preamble, third column, fifteenth line of the first full paragraph, the language “any of the following to has occurred: (a)” is corrected to read “any of the following has occurred: (a)”.

4. On page 73135, in the preamble, third column, Twelfth line from the bottom of the page, the language “option with a delta below 0.7, or both.” is corrected to read “option with a delta below 0.70, or both.”

5. On page 73136, in the preamble, second column, seventh line from the top of the page, the language “for April 11, 2013, beginning at 10 a.m.” is corrected to read “for April 11, 2014, beginning at 10 a.m.”.

**§ 1.871-15 [Corrected]**

6. On Page 73137, first column, the first sentence of paragraph (a)(7)(iv)(B)Example.(i) should read “Stock X and Stock Y are underlying securities within the meaning of paragraph (a)(11) of this section.”.

7. On page 73137, third column, the first sentence of paragraph (c)(2)(i) should read “A payment pursuant to a section 871(m) transaction that references a distribution with respect to an underlying security is not a dividend equivalent to the extent that the distribution would not be subject to tax pursuant to section 871 or 881, or withholding under chapter 3 or 4, if the long party owned the underlying security referenced by the section 871(m) transaction.”.

8. On page 73137, third column, the first sentence of paragraph (e) should read “With respect to payments made on or after January 1, 2016, a specified ELI is any ELI acquired by the long party on or after March 5, 2014, that has a delta of 0.70 or greater with respect to an underlying security at the time that the long party acquires the ELI.”.

9. On page 73141, first column, paragraph (l)(6)Example 3.(ii) should read “FI’s purchased call option has an initial delta of 0.75 and therefore is a specified ELI and a section 871(m) transaction. FI’s purchased call option and sold put option reference the same

underlying security. Because FI sold the put option referencing Stock X to adjust FI's economic position associated with the call option referencing Stock X, these options are entered into in connection with each other and treated as a combined transaction under paragraph (l)(1) of this section. Because the delta of the combined transaction is tested on the date that FI entered into the additional transaction, the delta of the combined purchased call option and sold put option is 0.60 (0.35 + 0.25). The combined transaction is not a specified ELI; however, the purchased call option remains a specified ELI."

**§ 1.1441-1 [Corrected]**

10. On page 73142, third column, paragraph(b)(4)(xxiii) should read "If a potential section 871(m) transaction is only a section 871(m) transaction as a result of applying §1.871-15(l) (combined transactions) and the withholding agent did not know that the long party (or a related person) entered into the potential section 871(m) transaction in connection with any other potential section 871(m) transaction, the potential section 871(m) transaction is exempt from withholding under section 1441(a).".

Martin V. Franks,  
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